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MEMORANDUM TO: _____ James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the New
Shipper Review of Natural Bristle Paintbrushes and Brush Heads
from the People's Republic of China

Summary

We have analyzed the arguments of the respondent in the new shipper review of Shanghai R&R Import/Export Co. Ltd. (Shanghai R&R) under the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC). As a result of our analysis, we have not made any changes from the preliminary intent to rescind. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this new shipper review for which we received comments by the respondent:

1. Whether Shanghai R&R met the requirements for a new shipper review;
2. The *bona fides* of Shanghai R&R's sale and use of adverse facts available.

Discussion of Issues

Comment 1: Whether Shanghai R&R met the requirements for a new shipper review

Shanghai R&R argues that it has met the requirements for initiation and is therefore eligible for a new shipper review. Shanghai R&R argues that the importer of record and the date of sale reported in the initiation request and questionnaire responses are in fact the correct information supporting its single shipment. Shanghai R&R cites to the questionnaire responses and Customs Form 7501 for this shipment as evidence that the importer of record and the date of sale correspond with the information it reported in its initiation request and questionnaire responses. Further, Shanghai R&R argues that any perceived inconsistencies the Department may have noted during verification were due to confusion from either poor translations or were the result of

errors made by Shanghai R&R while installing a new computerized accounting system for its company. Shanghai R&R therefore argues that the Department should calculate a dumping margin for Shanghai R&R in the final results based on the information it submitted pertaining to its single sale in this new shipper review.

Shanghai R&R has also requested that the Department question the other alleged importer identified by the Department at verification, which Shanghai R&R has stated is not the buyer of the shipment in question, to determine if that importer actually paid for the involved shipment. Shanghai R&R states that this will resolve whether the company it reported as the importer which Shanghai R&R argues purportedly paid for this sale is in fact the importer of record.

Department's Position: In general, the Department disagrees with respondent. Section 351.214(b)(2)(iv)(C) of the Department's regulations requires that the company that exports or produces subject merchandise and that is making the request for a new shipper review provide documentation establishing the date of the first sale to an unaffiliated customer in the United States. In the preliminary intent to rescind, the Department found that Shanghai R&R failed to provide documents establishing the date of the sale to the first unaffiliated customer in its request for a new shipper review as provided in section 351.214(b)(2)(iv)(C) of the Department's regulations. See Preliminary Intent to Rescind the Antidumping New Shipper Review of Shanghai R&R Import/Export Co. Ltd., 69 FR 46508 (August 3, 2004) (Preliminary Rescission).

At verification, consistent with normal verification practices, the Department examined company accounting and sales records in an effort to confirm that information provided by Shanghai R&R was complete and accurate. See Memorandum to the File from Scott Lindsay through Dana Mermelstein, Sales Verification Report for Shanghai R&R Import/Export Co., Ltd., July 15, 2004 (Verification Report). Specifically, the Department attempted to verify the information Shanghai R&R provided in its initiation request and subsequent questionnaire responses. During verification, Shanghai R&R was unable to reconcile the information it submitted in its initiation request, which showed that Shanghai R&R's reported importer purchased the involved merchandise, with internal accounting records that showed that another company was involved with the purchase of Shanghai R&R's reported sale to the United States. Furthermore, discrepancies in the description of the sales process, internal accounting records, and verbal explanations provided by Shanghai R&R employees fail to support the documentation and certifications submitted by Shanghai R&R in requesting the initiation of this new shipper review. See Verification Report. These discrepancies included information regarding the date of the first sale to an unaffiliated customer in the United States, the invoice date, and *inter alia* the importer of record. Shanghai R&R also failed to provide an accurate description of its sales process either during verification or in its questionnaire responses, for which Shanghai R&R provided a certification from a responsible company official attesting to the completeness and accuracy of the information submitted to the Department pursuant to section 351.303(g)(1). Specifically, we found that Shanghai R&R failed to provide complete and accurate information with regard to the issuance of pro-forma invoices and the date of sale. The Department further found that Shanghai R&R made modifications to an electronic invoice maintained on Shanghai R&R's filing system

prior to verification and was unable to provide a clear explanation for the invoice modifications. See Verification Report.

Shanghai R&R's arguments that these discrepancies were due to clerical errors made by Shanghai R&R or poor translations is not supported by the evidence on the record and does not provide sufficient information to cause the Department to change its position from the Preliminary Rescission. The Department finds the discrepancies in question were too frequent and found in too many separate and distinct forms (*i.e.* accounting records, computer files, and verbal explanations) to support Shanghai R&R's argument that these discrepancies were due to clerical errors or poor translations. See Verification Report. Moreover, Shanghai R&R's claim that these errors were due to poor translation is unpersuasive given that Shanghai R&R did not raise this claim at verification, which would have been the first available opportunity to make such a claim. Instead, Shanghai R&R did not make this argument until its case brief, well after verification. Further, these arguments do not change the fact that the completeness and accuracy of the information Shanghai R&R provided to establish its eligibility for a new shipper review could not be ascertained at verification. Thus, because the Department finds that Shanghai R&R failed to provide the information as required under section 351.214(b)(2)(iv)(C), we determine that Shanghai R&R did not meet the requirements for initiation of a new shipper review and that rescission of Shanghai R&R's new shipper review is appropriate. See, e.g., Honey from the Peoples Republic of China: Notice of Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Review, 69 FR 31348 (June 3, 2004) (Honey Rescission) (the Department rescinded a new shipper review where the company failed to provide certifications and documentation establishing the date of the first sale to an unaffiliated customer in the United States).

With regard to the Shanghai R&R's request that the Department now request additional information from the other alleged importer, the Department finds that an additional questionnaire is unnecessary. It is Shanghai R&R's responsibility to provide complete, accurate, and verifiable information on the record for the Department to make its determination. In this case, as detailed above, Shanghai R&R provided information and documentation which the Department found was not complete and accurate. See Preliminary Rescission. Thus, the Department finds that Shanghai R&R failed to establish its eligibility for a new shipper review. See, e.g., Honey Rescission.

Comment 2: The *bona fides* of Shanghai R&R's sale and use of adverse facts available

Shanghai R&R argues that the sale by Shanghai R&R was *bona fide*. Shanghai R&R states that the fact that Shanghai R&R only had one sale to the United States does not disqualify the sale from being *bona fide*. Shanghai R&R further states that the subject merchandise was resold in the United States and the initial and the resale prices were reasonable.

Shanghai R&R also argues that if the Department calculates a weighted average margin, the Department should not apply adverse facts available (AFA). Shanghai R&R argues that it has

met all of the criteria provided in Section 782(e) of the Act, and therefore the Department can use the information provided in Shanghai R&R's submissions rather than making an AFA determination.

Department's Position: Because the Department has reached a final determination to rescind this new shipper review based on Shanghai R&R's failure to establish its eligibility for a new shipper review in its initiation request, we have not addressed the issue of whether the sale under review is *bona fide* or whether the application of AFA is appropriate.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final rescission notice of this new shipper review in the Federal Register.

James J. Jochum
Assistant Secretary
for Import Administration

Date